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CRL OP(MD).



23

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 08/02/2023

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CRL OP(MD) . No.2255 of 2023

Periyasamy ... Petitioner/Accused(Rank not known)

Vs

The State rep.by,
The Inspector of Police,
Kallaperumbur Police Station,
Thanjavur District.
(Crime No.15/2023).

... Respondent/Complainant

For Petitioner : M/s.Senthil Murugan C,
Advocate.

For Respondent : Mr.M.Veeranthiran,
Government Advocate (Crl.Side)

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-

For Anticipatory Bail in Crime No.15/2023 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/Accused, who apprehends arrest at the hands of the respondent police for the offences punishable under Section 379 of IPC and Section 21(1) of Mines and Minerals (Development and Regulations) Act, 1957 in Crime No.15 of 2023 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that the petitioner has illegally transported $\frac{1}{4}$ unit of river sand. Hence the complaint.

3.The learned counsel appearing for the petitioner would submit that the petitioner is an innocent and he has not committed any offence as alleged by the prosecution. He would also submit that without prejudice to his contention, the petitioner is prepared to deposit a sum of Rs.5,000/- to any Welfare Scheme of the Government. Hence, he prays to grant anticipatory bail to the petitioner.

<https://www.hcma.gov.in/>



4.The learned Government Advocate(Crl.Side) would submit that the petitioner has illegally transported $\frac{1}{4}$ unit of river sand. Hence he opposed to grant anticipatory bail to the petitioner. However he fairly concedes that no previous case pending as against the petitioner.

5.Heard. Perused the materials available on record including the First Information Report.

6.This Court in a batch of applications in Crl.O.P.No.13334 of 2020 dated 03.09.2020 had dismissed the earlier application expressing the opinion that the offenders despite several orders passed by various Benches of this Court regarding illegal sand mining and knowing fully well about the evil consequences affecting the environment and society at large and the implications thereon are indulging in the offences of illegal quarrying/mining, theft and smuggling of sand and minerals and that finding that the case comes under the category of cases of large magnitude affecting and impacting livelihood of a very large number of people knowingly and unknowingly, had dismissed the earlier applications. Subsequently, the order of this Court in Crl.O.P.No.13334 of 2020 and Batch etc. dated 03.09.2020 was clarified by the Hon'ble Supreme Court and the Hon'ble Supreme Court had not agreed with the broad sweep of the observation made by this Court in Paragraph 27 of the order in Crl.O.P.No.13334 of 2020 and connected matters decided on 03.09.2020 and had directed that the role assigned to the person would have to be considered on case to case basis.

7.In view of the rehabilitation undertaken under the Tamil Nadu District Mineral Foundation Rules, 2017, and in order to curb the illegal sand mining activities, this Court is of the opinion that the petitioner may be directed to deposit a sum of Rs.5,000/- (Rupees Five Thousand only) to the credit of the District Mineral Foundation Trust concerned without prejudice to his rights and contentions before the trial Court.

8.Merely, because the petitioner had deposited the said amount, it would not amount to admission of his guilt. Therefore, it is open to the trial Court to deal with the case independently.

9.Taking into consideration the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

10.Accordingly, the petitioner shall make a non refundable deposit of Rs.5,000/- (Rupees Five Thousand only) by way of Demand Draft/RTGS/NEFT to the credit of the District Mineral Foundation Trust concerned, without prejudice to his rights and contentions before the trial Court, on such deposit and on production of proof,



the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Judicial Magistrate No.II, Thanjavur, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent police everyday at 10.30 a.m., until further orders.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-

08/02/2023

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SJI

TO

1.THE JUDICIAL MAGISTRATE NO.II, THANJAVUR.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR @ KUMBAKONAM.



3. THE INSPECTOR OF POLICE,
KALLAPERUMBUR POLICE STATION,
THANJAVUR DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE DISTRICT MINERAL FOUNDATION TRUST
THANJAVUR.

+1 CC to M/s.C.SENTHIL MURUGAN, Advocate (SR-2059[I] dated
09/02/2023)

ORDER
IN
CRL OP(MD) No.2255 of 2023
Date :08/02/2023

RK/VR/SAR-3 (17/02/2023) 4P/7C